In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 279

JOHN PAPALIA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 13-15, Vol. 11, 36-38)[1] is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on June 19, 1964 (Vol. II, 39). The petition for a

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[1] The certified record is in three parts. Vol. I is appellant's appendix below. Vol. II is the government's appendix below and proceedings in the court of appeals.

writ of certiorari was filed on July 15, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the district court's denial (following a hearing) of petitioner's motion to vacate sentence on his plea of guilty should be set aside for failure to enter detailed findings of fact.

STATEMENT

In March, 1963, in the United States District Court for the Southern District of New York, petitioner, who was represented by counsel, pleaded guilty, after trial had commenced, to three counts charging violations of the narcotic laws. A week later, he was sentenced to imprisonment for ten years (Vol. I, 16-17).

On February 17, 1964, petitioner filed a motion to vacate his sentence or withdraw his plea of guilty, alleging that, as the result of taking drugs, he was mentally incompetent both at the time of the plea and of the sentence (Vol. I, 1-2). In his affidavit he alleged that he had been taking drugs for the treatment of a tubercular condition prior to the time of plea and sentence; that the drugs produced a state of euphoria or depression during which he could not remember to any extent what had happened; and that he was in such a state at the time he pleaded guilty and was sentenced. He alleged that during the period in which he took the drugs he complained to his physician, Dr. Gross, of a feeling of giddiness for substantial periods of time (Vol. I, 10-11).

At the hearing on the motion, petitioner testified that he could not recall pleading guilty or being sentenced; and that while he recalled speaking to his attorney during 1962, he had no recollection of appearing in court with counsel in March, 1963. He said he first discovered that he had pleaded guilty when he was in Federal Detention Headquarters prior to being sent to a penitentiary, but that he did not attempt to communicate with his lawyer or anyone else at the time. Petitioner's brother testified that after his plea petitioner, in conversation, indicated that he did not know that he had pleaded or that he was to be sentenced. The brother had not so informed petitioner's attorney (Vol. II, 17-23).

Dr. Gross testified that she treated petitioner for tuberculosis from December, 1962, to February 14, 1963, and prescribed a drug known as Isoniazid. The 325 pills prescribed for petitioner from January to March, 1963, was a standard dosage. Although she had treated several thousand patients with the drug, she had never seen a psychiatric disturbance from this dosage. Petitioner never complained to her of having feelings of giddiness. In February, 1963, she made a note that petitioner appeared depressed but could not really tell because she not seen him often enough (Vol. II, 2-16).

A neurophychiatrist testified that Isoniazid was capable of producing "toxic delirium of the nerves" which could lead to confusion and memory lapses. In answer to a hypothetical question, based on petitioner's testimony that he could not recall pleading guilty and was at times depressed, the doctor said it

was possible that petitioner was suffering from mental abberation at the time he pleaded guilty (Vol. II, 30-32). Another doctor testified that he had administered the drug in thousands of cases, but had observed side effects in only three cases. None of these showed depression, and in each case the side effects were clear (Vol. II, 32-34).

On this record the government moved to dismiss the motion on the ground that petitioner had failed to meet his burden of proof. The court granted the motion, observing that "the case is a tissue of lies from A to Z" (Vol. II, 35). Counsel asked whether the comment was on the record and the court replied that it was (Vol. II, 35).

ARGUMENT

It is evident that petitioner did not sustain his burden of showing that his plea of guilty, entered during trial with the assistance of counsel, was involuntary. The judge was surely justified in refusing to credit petitioner's claim that he was wholly unaware of his actions but nevertheless failed to complain to anyone even when he discovered he was being sent to prison. No doctor supported petitioner's claim. The physician who treated him contradicted his claim that he complained of suffering from the drug. The testimony of the other physicians was not based on any familiarity with petitioner's case and, in any event, offered no significant support for his contentions.

In these circumstances, the finding, by the trial judge that the case was "a tissue of lies" was ade-

quate. It showed that the testimony of petitioner and his witnesses that he did not remember pleading guilty—without which there was absolutely no foundation for the motion—was not credited.[3] If petitioner had seriously wished more specific findings to be made, he could have requested them at the time.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

HERBERT J. MILLER, JR.,
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AUGUST, 1964

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[3] There is no issue here of the proper standard to determine mental competency. If the testimony of petitioner and his witnesses as to lack of awareness was disbelieved, as it was, there was no testimony to support any claim of mental incompetence under any standard.

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